Report of Resources Agency Advisory Panel
To Resources Secretary Mike Chrisman
October 25, 2007

Secretary Chrisman:

On March 22, 2007, the California State Auditor issued its investigative report summarizing investigations of improper government activity completed between July 2006 and January 2007. In Chapter 1, the Bureau of State Audits (BSA) reported on allegation 12006 - 0908. "An employee of the Department of Conservation (Conservation) engaged in various activities incompatible with his State employment, including misusing the prestige of his State position and improperly using state resources, including State time to perform work for the benefit of his spouses employer, a charitable organization". See complete BSA report in "Attachment A."

As a result of this report, Resources Secretary Chrisman appointed former Assemblymember Fred Keeley, former Secretary of State Bruce McPherson, and former Attorney General John Van de Kamp, to advise the Agency on matters related to the BSA's investigation, as well as the follow-up investigation under way, and to advise the DOC regarding steps to be taken to discourage similar problems in the future.

The Panel met with DOC and Resources Agency personnel on April 23, 2007, May 9, 2007, June 13, 2007, July 25, 2007, and October 25, 2007. (The DOC cooperated with the Panel, providing thorough and informative status reports.)

On October 25, 2007, the Panel received a "Report to Resources Agency Advisory Panel," hereinafter referred to as "the Report", from Cynthia Traxler, Senior Staff Counsel at DOC, reporting on the status of its investigation and the steps taken by the DOC since the issuance of the BSA report. See "Attachment B.

Based on what the Panel has learned, no other forms of misconduct similar to that found in the BSA report have come to light. At the same time, the review conducted shows some organizational weaknesses regarding DOGGR management, which could create opportunities for future problems that could undermine its integrity and regulatory efforts.

A number of steps have been taken by the DOC to determine whether the misconduct was widespread. Those included reviewing all Statements of Economic Interest (Form 700s) filed by DOGGR personnel, covering 2000 – 2006, and reviewing the e-mails of 28 DOGGR personnel – both staff and management. Nothing was found in this part of the investigation that evidenced the type of misconduct found in the BSA report (2 employees were found to have filed Form 700s indicating less than a disqualifying interest in regulated companies; however, they were not found to have made or participated in questionable decisions regarding these entities.

Peer group reviews were conducted in three of the six oil and gas districts, testing a sample of actual transactions to determine whether appropriate processes were followed. Again, while no additional misconduct was found, organizational and management weaknesses were uncovered.

At the recommendation of the Panel, an anonymous survey was conducted of all DOGGR management and staff from June 1 - 15, 2007. The survey contained 41 questions and was designed to cover a variety of subjects, including employee ethics, supervisory and management effectiveness, employee job satisfaction, and awareness of DOGGR policies. More than 60 percent of the management and staff participated.

As a result of its investigation, the DOC has taken the following action:

1. It has filed an Amended Conflict of Interest Code expanding the designated DOC positions required to file Form 700 from approximately 200 to roughly 400. It is awaiting FPPC approval.
2. As of July 1, 2007, all of DOC's designated employees have participated in the Attorney General's on-line ethics training program.
3. It is planning a department-wide ethics training program for all employees. As of this writing it will be conducted at the outset with the assistance of the California Department of Corrections and Rehabilitation as customized for DOC. It is planned that DOC will ultimately conduct the training "in-house."
4. A DOC Pilot Ethics Advisory Panel has been established and has met to review the steps being taken by DOC to meet ethical concerns.
5. The annual Whistleblower notice was issued September 19, 2007 notifying DOC employees of the BSA Whistleblower hotline, which provides anonymity protection.
6. DOC is in the process of updating its Incompatible Activity Policy.

CONCLUSIONS:
The Panel has concluded that the Department of Conservation (DOC) has acted in a timely and thorough manner in responding to both the specific activities of concern within DOGGR and to the report of the Bureau of State Audits. The DOC moved with alacrity to review this matter with depth, sensitivity to the good work of the vast majority of DOC employees, and a view to improving the ethical expectations of all employees and the functions of the DOC.

The Panel commends the DOC for the specific actions it has taken to remedy the issues of concern, and to go beyond the specific issues and use this situation as an opportunity to examine DOGGR's practices and procedures. Specifically, the Panel is especially encouraged by the DOC's establishment of a permanent Internal Ethics Panel, and the substantial expansion of the positions to which the annual reporting of financial disclosures will apply.

The Panel also believes that while the DOC's actions are commendable, there are several additional recommendations that the Panel is making to further improve the DOC's ethical standards and the expectations of the regulated community. The Panel believes that most of our recommendations are consistent with the DOC's recommendations contained in the "Report to Resources Agency Advisory Panel – October 25, 2007."

RECOMMENDATIONS:

1. DOC and DOGGR Executives should continue efforts currently under way, working with an outside consultant and DOGGR employees to address DOGGR organizational deficiencies through development of strategic initiatives that should address the potential for ethical lapses. These initiatives should be incorporated into DOGGR's strategic plan and implemented on a schedule to be determined by the Director.
2. The DOC should monitor and support efforts by DOGGR executives to implement strategic initiatives developed to address DOGGR organizational weaknesses, and such monitoring should include a schedule for implementation of specific activities.
3. Each DOGGR District should be subject to periodic peer reviews in the future, as often as determined necessary by the Director, in consultation with the DOC's Internal Ethics Panel, but not less frequently than once every two years.
4. In consultation with the Internal Ethics Panel and the Director, DOGGR executives should periodically conduct staff surveys of DOGGR personnel.
5. The results of staff surveys and peer reviews should, to the extent feasible, be shared with DOC employees and considered in development of DOGGR's future strategic initiatives.
6. The DOC's Internal Ethics Panel should consist of not less than seven members, including at least the following: (1) The Director, or Chief Deputy Director, or Deputy Director, or an Assistant Director; (2) The DOC's Ethics Officer; (3) The DOC's Chief of Human Resources; (4) The DOC's Equal Opportunity Officer; (5) Three employees of the DOC who serve as "Line-Level Employees," including at least one person who is a "Line-Level Supervisor." The "Line-Level Employees" and "Line-Level Supervisor" should serve two-year terms, and through rotation of appointments, be representative of the DOC's various divisions and offices.

7. The Director should develop and implement a process by which the annual "Statements of Economic Interest" are reviewed by appropriate managers such that potential conflicts of interest or other incompatible activities are detected, prevented, and/or corrected. On an annual basis, the Director should send a personalized notice to every employee of the DOC informing them of the BSA Whistleblower procedures.
8. The Director should work with DOGGR to identify any organizational or operational vulnerabilities that, if permitted to continue, could be exploited by one or more members of the regulated community to avoid DOC rules, procedures, governing statutes, or to gain improper economic advantage. Such identified vulnerabilities should be subject to timely review by the Director, and appropriate actions undertaken and implemented by the Director.

In closing, we add this caveat. There is no way that one will ever know with absolute assurance that there was no other misconduct within DOGGR, nor is it possible in any institution to have absolute assurance that all future misconduct can be prevented. One can't know everything that goes on. And the human condition is fraught with frailty and temptation. What we do know is that there are actions that can be taken that will tend to reduce temptation and guard against frailty. In light of the BSA report, the DOC has moved aggressively and responsibly to take those types of actions.

The Honorable Fred Keeley,
Treasurer, County of Santa Cruz

The Honorable Bruce McPherson

The Honorable John Van de Kamp, Esq.

Attachment A

CHAPTER 1

Department of Conservation: Misuse of State Resources, Incompatible Activities, and Behavior Causing Discredit to the State

ALLEGATION I2006-0908

An employee with the Department of Conservation (Conservation) engaged in various activities that were incompatible with his state employment including misusing the prestige of his state position and improperly using state resources, including state time, to perform work for the benefit of his spouse's employer, a charitable organization.

RESULTS AND METHOD OF INVESTIGATION

At the request of Conservation, we investigated and substantiated the allegation as well as other improper acts. To conduct the investigation, we analyzed the employee's e-mail records from April 2003 through May 2006. We reviewed state laws and regulations and Conservation's policies and records. Finally, we interviewed Conservation employees, including the employee who is the subject of this report, and his manager.

We found that the employee violated the financial disclosure requirements of the California Political Reform Act of 1974 (act) by failing to disclose his ownership of stock issued by companies his office regulates (regulated companies), including Company A, a company with which he has had extensive regulatory contact.[1] In addition, the employee made regulatory decisions that had the potential to affect the companies in which he held stock, thereby creating the appearance of a conflict of interest. We also found that the employee misused state resources to engage in numerous activities that were incompatible with his state employment, including misusing the prestige of his state position. We believe that the nature and extent of these improper activities caused a discredit to the State. Table 1 on the following page identifies the employee's improper activities.

[1] For a more detailed discussion of the laws discussed in this chapter, see Appendix B.

TABLE 1

The Employee Engaged in Several Improper Activities

Improper Activity	Law or Policy Violated	Possible Consequences
Failed to disclose stock ownership in oil industry companies and regulated companies*	California Political Reform Act of 1974	Possible fine of $10,000 or three times the amount not disclosed or possible criminal sanctions
Owned stock in a company at the time he issued permits to that company	Common law doctrine against conflicts of interest	Possible legal action challenging the validity of permitting decisions
Use of state time and resources for fundraising	Government Code, Section 8314	Possible fines of up to $1,000 for each day on which a violation occurs
	Incompatible activities policy	Possible disciplinary action
Solicited charitable contributions from oil industry companies and regulated companies	Incompatible activities policy	Possible disciplinary action
Used his state position to assist a charity	Incompatible activities policy	Possible disciplinary action
Requested and received personal discounts from a state vendor	Incompatible activities policy	Possible disciplinary action
Sent more than 65 e-mails that were insubordinate or of a nature to discredit the State	Government Code, Section 19572	Possible disciplinary action

* The employee is required to disclose his stock ownership in companies regularly engaged in oil and gas exploration and related industries (oil industry companies), which includes regulated companies.

In addition to the employee's improper activities listed in the table, we question the manager's ability to adequately monitor and control the employee's activities. We believe that he either was aware of, or should have been aware of, the employee's misuse of his state position to solicit charitable donations from companies engaged in oil and gas exploration and related industries (oil industry companies), which includes regulated companies.[2] Further, we found that the manager also owned stock in seven oil industry companies including one regulated company, Company A. However, the manager failed to disclose these interests on his state disclosure forms as is required by law. Finally, we found that the manager accepted gifts from oil industry and regulated companies, in violation of state law governing incompatible activities.

[2] Similar to the employee, the manager is required to disclose his interests in oil industry companies, including regulated companies.

BACKGROUND

Conservation provides services and information that promote environmental health, economic vitality, informed land-use decisions, and sound management of California's natural resources. The employee works in Conservation's Division of Oil, Gas & Geothermal Resources (division). The division regulates statewide oil and gas activities and its mission is to oversee the drilling, operation, maintenance, and the plugging and abandonment of oil, natural gas, and geothermal wells through sound engineering practices that protect the environment, prevent pollution, and ensure public safety. As part of his duties to fulfill the division's mission, the employee provides technical supervision of oil, gas, and geothermal resource exploration and development through well permitting and field surveillance. The employee is also the primary contact for the division's vendor for cell phone services, Company B.

THE EMPLOYEE FAILED TO DISCLOSE HIS STOCK OWNERSHIP IN REGULATED COMPANIES

The employee owns or has owned stock in a number of oil industry companies, including at least two regulated companies (Company A and Company J). Moreover, the employee has had extensive regulatory contact with Company A, one of the two regulated companies. However, he failed to disclose his ownership of stock in these companies, in violation of the act. The act requires state agencies to adopt conflict-of-interest codes and requires them to identify positions that involve the making or participating in the making of decisions that may foreseeably have a material effect on any financial interest. The act also requires state agencies to identify, for each position, the specific types of investments, business positions, interests in real property, and sources of income that are reportable. In addition to other potential penalties provided by law, the act states that any person who knowingly or willfully violates any provision of the act is guilty of a misdemeanor and may be required to pay a fine of $10,000 or three times the amount the person failed to properly report.

As required by the act, Conservation requires the employee and others in his job classification to annually complete statements of economic interests because these employees work in a regulatory capacity and their decisions may have an economic impact on the companies they regulate. Specifically, the employee has the authority to approve permits that allow companies to extract or produce oil or geothermal resources.

Accordingly, the employee, his manager, and others in their job classifications are required to include on their statements of economic interests any investments in, interests in business positions in, and income from any business entity of the type that may be affected by their decisions. This includes but is not limited to stock ownership with a value of $2,000 or more in businesses that are regularly engaged in the extraction and/or production of oil, gas, or geothermal resources, or providing consulting, research, or other contractual services to companies sponsoring such developments.

We obtained the employee's statements of economic interests for each year from 2000 to 2005. In each statement the employee certified under penalty of perjury that he had no reportable business interests. However, we found that the employee stored information on his state computer that he later confirmed as accurate where he tracked his stock purchases and the related sales from at least January 1991 to June 2006. Our analysis of the information, as shown in Table 2, indicates that the employee failed to disclose his business interests every year from 2000 to 2005. In particular, we found for those years at least 18 instances where the employee failed to disclose that his stock ownership in various companies exceeded $2,000 in value. For example, the employee should have disclosed his business interests in 10 companies in 2005 alone.

TABLE 2

Employee Ownership of Stock That He Failed to Disclose

Company	2000	2001	2002	2003	2004	2005
Company A					*	*
Company B	*	*	*	*	*	*
Company C					*	*
Company D						*
Company E						*
Company F						*
Company G					*	*
Company H						*
Company I						*
Company J						*
Company K	†	†				

Source: Bureau of State Audits' analysis of the employee's stock purchases and related sales.

* The employee owned at least $2,000 of stock in this company and was required to disclose his business interest.

† The number of shares of Company K stock owned by the employee varied. Depending on the number of shares he owned during the year, the employee may have needed to disclose his business interests if his stock ownership exceeded $2,000.

Furthermore, based on our review of the employee's e-mail records, we believe he intentionally and knowingly attempted to conceal his ownership of stock in oil industry and regulated companies. Specifically, when Conservation informed the employee on April 30, 2004, that he had not yet completed his statement of economic interests, which was due on April 1, 2004, he initially questioned whether he was required to complete the statement. He also stated that he believed managers—not employees at his level—were required to complete statements of economic interests and that he should not have to waste time completing his statement without good reason. The employee later complained in an e-mail exchange that completing the statement was a waste of time and that it made no sense because his decisions had no economic impact on the companies he regulates and urged that the reporting requirements be revised. However, he is a designated employee according to Conservation's conflict-of-interest policy and he approves permits for Company A and purchases cell phones and cell phone accessories from Company B in his capacity as a state employee. Therefore, these interests should have been disclosed.

THE EMPLOYEE OWNED STOCK IN COMPANIES A AND B AT THE TIME HE MADE BUSINESS DECISIONS AFFECTING THOSE COMPANIES

We believe the employee conducted himself in a questionable manner when he communicated with—and approved permits for—Company A, a company whose stock he owned at the time he approved its permit requests. Specifically, we believe that in doing so the employee may have violated the common law doctrine (doctrine) against conflicts of interest. Similarly, we believe he also violated the doctrine when he made business decisions affecting Company B while he owned stock in that company. The doctrine provides that a public officer is implicitly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public. Because he owned stock at the same time he approved permits for Company A and made purchases in his state capacity from Company B, we question whether the employee was able to make these business decisions with disinterested skill for the primary benefit of the State.

The employee conducted himself in a questionable manner when interacting with and approving permits for Company A.

Further, we found that the employee conducted himself in a questionable manner when interacting with and approving permits for Company A and that this conduct was of such a nature as to discredit the State. For example, we found several

e-mail exchanges with Company A that are cause for concern, mostly relating to the employee's approval of 24 permits submitted by Company A over a three-day period. Specifically, the employee stated that he was aware of public concern over potential environmental and legal issues regarding an incident related to well work previously conducted by Company A in a specific geographic region. In an e-mail exchange with a high-level official at Company A, the employee informed the official that he believed Conservation was about to place a hold on permits for the geographic region and that Company A should submit any permit requests for that region before the hold was put in place. The employee said he encouraged Company A to expedite its permit requests because Company A provides jobs and capital investment in an economically depressed location. The employee's manager acknowledged he was aware the employee told Company A to expedite its permit requests. The manager stated that he agreed with this action so Company A would be able to work in the region while the environmental and legal issues were settled. When approving these permits, the employee should have been protecting the State's interests by reviewing the proposed projects for engineering soundness and conformity with state laws. Instead, it appears that he and his manager may have been more concerned with Company A's financial interests.

Because affected local government officials became aware of the employee's apparent attempt to expedite Company A's requests for permits, his actions undermined Conservation's credibility. His actions also complicated Conservation's negotiations with the city, county, and Company A regarding Company A's operations in an oil field near the city's boundaries. Subsequently, a month after the employee approved and issued the 24 permits, Conservation cancelled the permits in an effort to provide local government authorities an opportunity to review current well drilling operations in the geographic region.

THE EMPLOYEE MISUSED STATE RESOURCES TO ASSIST A CHARITABLE ORGANIZATION

We found that the employee misused his state e-mail—as well as other state resources—in a number of ways, and engaged in activities that were incompatible with his state employment while assisting his spouse in securing contributions on behalf of her employer, a charitable organization (Charity 1) in various capacities. These activities include soliciting donations from

regulated companies and using his state position to facilitate Charity 1's potential purchase of a property on which he previously performed regulatory work.

State law prohibits state employees from engaging in activities that are inconsistent, incompatible, in conflict with, or inimical to, their state employment. These activities include using the prestige or influence of the State for one's private gain or advantage or for the private gain of another; using state time, facilities, equipment, or supplies for private gain or advantage; and receiving or accepting, directly or indirectly, any gift, including money or any other thing of value, from anyone who is doing or is seeking to do business of any kind with the employee or his appointing authority under circumstances from which it reasonably could be determined that the gift was intended to influence the employee in his official duties or was intended as a reward for any official actions performed by the employee. State law and Conservation policies also prohibit state officers and employees from using state resources such as land, equipment, travel, or time for personal enjoyment, private gain, or personal advantage, or for an outside endeavor not related to state business. Finally, Conservation's policy on incompatible activities prohibits its employees from using the names of persons obtained from office records for any purpose other than official business.

The Employee Solicited Donations for Charity 1 From the Companies He Regulates

Many of the 340 e-mails the employee sent or received involving Charity 1 indicate he spent considerable state time and resources when serving as co-chair for an annual sponsorship event.

The employee used his work e-mail account to send or receive more than 340 e-mails involving discussions of Charity 1 activities and events over the three-year period we reviewed. Nearly 80 of these e-mails involved soliciting donations for Charity 1 and in several instances he directly solicited donations from either oil industry or regulated companies. Many of the 340 e-mails indicate that the employee spent considerable state time and resources when serving as co-chair for an annual sponsorship event benefiting Charity 1 by assisting in planning and organizing the event and soliciting sponsorship donations from regulated and other oil industry companies for the event. For example, our review of the employee's e-mail records shows that he used his state computer during regular work hours to proof and edit correspondence and sponsorship information related to Charity 1. By extensively using state resources for these nonwork-related purposes, we believe that the employee

violated state law as well as Conservation policy prohibiting the use of state resources for personal benefit or the personal benefit or gain of another.

State law outlines causes of discipline for state employees, including insubordination, dishonesty, or any conduct of such nature that it would cause a discredit to the State. We believe the employee's actions meet this definition. The employee actively solicited donations from companies over which he has regulatory authority even though he had been admonished for doing so in the past. Specifically, the manager served the employee with an advisory memo in April 2002 for soliciting charitable donations from oil industry and regulated companies for a sponsorship event benefiting Charity 2. In the advisory memo, the manager informed the employee that his efforts to solicit contributions from regulated companies could place the division in a compromised position. The manager further directed the employee to cease these activities. At that time the employee assured the manager that he would not be involved in conducting any fundraising activities involving regulated companies. The manager provided him with a copy of Conservation's policy on incompatible activities, which mirrors the language of the state incompatible activities law we described previously.

The manager served the employee with an advisory memo in April 2002 to cease soliciting charitable donations from oil industry and regulated companies for a sponsorship event benefiting Charity 2.

Because the employee actively solicited donations from oil industry companies and regulated companies, despite being admonished for such activities in the past, we believe his actions constitute insubordination. Further, it appears that the employee was untruthful when he told the manager that he would no longer solicit donations because his e-mail records show he actively did so to the considerable benefit of Charity 1. In particular, e-mail records indicate that Charity 1 received approximately $36,000 as a result of its 2005 charity event and approximately $16,000 from another charity event that was initiated by the employee, and also largely sponsored by oil industry representatives. Moreover, in an October 2005 e-mail exchange between a representative from Charity 1 and the employee's spouse that was also sent to the employee, the representative acknowledged the employee's efforts to solicit donations from oil industry companies. Specifically, the representative thanked the employee for being a supporter of Charity 1 and acknowledged that Charity 1 ". . . really benefits

from your contact with the oil community." The employee's spouse added that it was the employee's vision five years earlier that the oil industry should work with Charity 1.

When we spoke with the employee, he acknowledged this was his vision but denied that he had solicited contributions from regulated companies for the annual charity event. However, as previously stated, we found that on several occasions he sent e-mails to oil industry or regulated companies, directly soliciting their sponsorship for the annual event. When confronted with this information, the employee indicated his belief that because he only contacted a few representatives of oil and gas industry companies to participate in the event on a personal basis, and did not solicit sponsorships larger than participation fees, his efforts did not constitute solicitation. However, the employee's e-mail records contradict his statement, as we found at least six instances in which he solicited contributions from regulated companies larger than participant sponsorships. In addition, even though the employee contends that he contacted oil and gas company representatives on a personal basis, the fact that he sent these requests via his state e-mail gave the appearance that the contacts were more business-related than personal. Furthermore, participation in the 2006 event cost participants or sponsors $150 per person. Thus, we disagree with the employee's reasoning and believe that his efforts to obtain sponsors for participants in the annual event are incompatible with his state employment.

On several occasions the employee sent e-mails to oil industry or regulated companies, directly soliciting their sponsorship for Charity 1's annual event.

Moreover, even though the employee denied he solicited contributions from the six regulated companies that sponsored the event, he acknowledged he was somewhat responsible because he had introduced his spouse to representatives of oil and gas industry companies. We do not question the value of a relationship between regulated companies and charitable organizations, but we do question the employee's use of the prestige of his state position to facilitate that relationship.

The Employee Misused State Resources to Facilitate Charity 1's Attempted Land Purchase

The employee also misused his state e-mail and improperly used his state position to facilitate Charity 1's attempt to purchase property from a private citizen (property owner), with whom he had previously interacted in his regulatory capacity as a state employee. The employee violated state law and Conservation's

policy prohibiting its employees from using the prestige of their state positions for the gain of themselves or others when he contacted the property owner on behalf of Charity 1.

E-mails and meeting minutes indicate that the employee used his state position to play a key role in Charity 1's attempt to purchase land.

Specifically, the employee misused his state computer and e-mail by sending or receiving 22 e-mails regarding Charity 1's efforts to purchase the property. These e-mails, along with meeting minutes that summarized a meeting attended by the employee, the property owner, and Charity 1 representatives, indicate that the employee used his state position to play a key role in Charity 1's attempt to make the purchase. Specifically, the evidence indicates that the property owner did not respond to Charity 1's initial efforts to purchase the property because she was unfamiliar with Charity 1's representative. The meeting minutes state that the employee would serve as the primary contact person for the purchase because of his previously established professional relationship with the property owner. Additionally, the employee agreed to use his contacts with environmental representatives to assist the property owner in clearing any pending environmental issues related to the property, contacts he apparently made in his capacity as a state employee. By improperly using the prestige of his position to benefit the organization that employs his spouse, the employee violated state law and Conservation's incompatible activities policy.

THE EMPLOYEE USED THE PRESTIGE OF HIS POSITION TO EARN DISCOUNTS ON HIS PERSONAL CELLULAR PHONE PURCHASES

As previously mentioned, the employee serves as the contact for the division's vendor for cell phone services. In this capacity, he has regular dealings with representatives of the cell phone vendor, Company B. In the course of his employment, the employee regularly exchanged e-mails with representatives of Company B regarding personal purchases for himself and his family members. Specifically, the employee exchanged more than 55 e-mails with Company B regarding personal purchases. We believe the large number of e-mails the employee sent and received for his personal purchases constitutes a misuse of his state e-mail account. More significantly, we believe the employee misused the prestige of his position and potentially caused a discredit to the State when on two separate occasions he requested Company B to waive a $35 fee associated with his personal cell phone purchases. In his e-mail requests, the employee informed Company B that a large number of Conservation offices switched to Company B based on his

recommendations. One could easily surmise from this request that Company B may have felt compelled to provide the discount in exchange for his continued efforts to recommend Company B to other Conservation offices. The employee's e-mail records show that Company B's representative agreed to waive the fee on both occasions.

OTHER INAPPROPRIATE CONDUCT CAUSING DISCREDIT TO THE STATE

The employee sent more than 65 e-mails that were insubordinate or were of such a nature as to discredit the division. The e-mails included harsh criticism of Conservation, the division, and his co-workers.

Our review of the employee's e-mail records also indicates that he regularly misused his state e-mail and engaged in a pattern of behavior that likely could be considered insubordinate or apt to cause a discredit to the State. Specifically, for the three-year period we reviewed, the employee sent or received more than 130 e-mails regarding personal financial matters. Most of these e-mails pertain to the potential value of specific stocks. At least 15 of them involved discussions of potential investments in either the oil industry or oil and gas industry companies. Further, we found that the employee sent more than 65 e-mails to coworkers, superiors, representatives of oil industry and regulated companies, and others that we believe were insubordinate or were of such a nature as to discredit the division. This includes e-mails the employee sent to Company A that included harsh criticism of Conservation, the division, and his co-workers as well as e-mails he sent to Company A touting Company A's stock value. For example, in one of his e-mail exchanges with Company A, the employee stated that he would try to prevent his office from "hitting" Company A with any more "adjective deleted" fines. We believe that the examples above, combined with his overall conduct described previously and other e-mails sent via his state computer, demonstrate a pattern of misconduct that when viewed in its entirety, constitutes conduct that is a discredit to the State.

THE MANAGER FAILED TO ADEQUATELY MONITOR THE EMPLOYEE'S IMPROPER ACTIVITIES AND FAILED TO DISCLOSE HIS OWN INTERESTS IN OIL INDUSTRY AND REGULATED COMPANIES

Even though in 2002 the manager admonished the employee for soliciting donations from oil industry and regulated companies, the manager's actions were inadequate since the employee was allowed to continue to work regularly with oil industry and regulated companies without restrictions or monitoring

of his conduct. The Financial Integrity and State Manager's Accountability Act of 1983 (accountability act), states that each state agency must establish and maintain a system or systems of internal accounting and administrative controls. Further, the accountability act requires that, when detected, weaknesses must be corrected promptly.

As we mentioned previously, the manager served the employee with an advisory memo in April 2002 for soliciting charitable donations from oil industry and regulated companies for a sponsorship event benefiting Charity 2. As part of his efforts to prohibit the employee from continuing to solicit donations from oil industry and regulated companies, the manager changed the employee's area of geographic responsibility. Thus, the employee continued to have regular contact with oil industry and regulated companies, but for a different geographic area within the same district. Because the employee had solicited donations from oil industry and regulated companies in the past, but was still allowed to interact with them on a regular basis, we would expect the manager to exert greater oversight or controls to ensure that the employee's interactions with oil industry and regulated companies were appropriate. However, we found no evidence that the manager initiated additional oversight or controls to monitor the employee's activities.

The manager participated in Charity 1's annual event in 2005 and 2006 and the employee and a representative of a regulated company were co-chairs of the event in 2006.

More significantly, information the employee stored on his state computer indicates that the manager should have known that the employee was involved in charitable functions involving regulated companies and Charity 1. These documents show that the manager participated in the annual charity event in 2005 and 2006 and the employee and a representative of a regulated company were co-chairs of the event in 2006. Additionally, these documents indicate that nine oil industry companies were sponsors for the event. We determined that six of them had previously submitted applications to the manager's district office for approval. Thus, it appears that the manager was aware—or should have been aware—that the employee was again soliciting donations from the regulated companies.

The manager acknowledged that he was aware that the employee's spouse worked for Charity 1 and that he realized regulated companies sponsored the annual charity event. However, he told us he did not believe the employee solicited donations from the sponsors because the employee had told him when the advisory memo was issued in 2002 that he would no longer solicit donations from oil industry companies.

Nonetheless, given the employee's history of soliciting donations from these types of companies, combined with the nature of Charity 1's sponsors for the annual event, the manager should at least have reminded the employee that he was prohibited from soliciting donations from regulated companies.

Moreover, documents stored on the employee's state computer indicate that Company L, a company engaged in an industry related to oil and gas exploration, paid the manager's $150 entry fee for the annual charity event in 2006. When we questioned the manager, he stated that he was not certain whether Company L paid his entry fee but said he did not pay the fee. The manager added that he also did not pay for his entry into the previous year's event and stated that it was not uncommon for oil industry companies to pay for his entry into similar events. When we reviewed information relating to the annual charity event held in 2005, we found indications that Company M, which has submitted applications to the manager's office for his approval, paid his entry fee for the event. By accepting gifts from companies his office regulates, the manager may have violated conflict-of-interest laws and policies that prohibit a state employee from receiving any gift from anyone seeking to do business of any kind with the employee or his department under circumstances from which it reasonably could be substantiated that the gift was intended to influence the employee or was intended as a reward for official actions performed by the employee.

The manager informed us that he held stock exceeding $2,000 in value in three oil and gas industry companies in 2004 and four oil and gas industry companies in 2005.

Finally, in the course of our interview, the manager also acknowledged that he has owned stock in a regulated company as well as in other oil and gas industry companies. Specifically, the manager informed us that in 2004 he held stock exceeding $2,000 in value in three oil and gas industry companies, including Company A, and four oil and gas industry companies in 2005. When we asked why he did not report his ownership of stock in regulated companies on his annual statement of economic interests, the manager responded that he did not believe he owned enough to require him to report them.

AGENCY RESPONSE

Conservation reported that it intends to pursue adverse action against both employees. Further, Conservation stated that it is initiating measures through which it hopes to reinforce the ethical standards governing state employee conduct and reduce the potential for future misconduct, including:

- Directing all Conservation employees to review its policies and requirements on incompatible activities, conflict of interest, and gifts.
- Developing and implementing an ethics seminar and training.
- Establishing an ethics panel to review and update Conservation's conflict-of-interest code and incompatible activities requirements and advise Conservation regarding ethics issues. ■

Attachment B

REPORT TO RESOURCES AGENCY ADVISORY PANEL ON INTERNAL INVESTIGATION, DIVISION OF OIL, GAS AND GEOTHERMAL RESOURCES (October 25, 2007)

EXECUTIVE SUMMARY

With oversight and advice from members of the Resources Agency Advisory Panel, the Department of Conservation and selected personnel from its Division of Oil, Gas and Geothermal Resources (DOGGR) conducted an internal investigation and review of DOGGR operations. The investigation comprised multiple activities, including review of Statements of Economic Interest, review of employee e-mails, an anonymous staff survey and some elements of a peer review process that focused on three of DOGGR's six oil and gas districts. Findings of the investigation and peer review included the following:

- There is no evidence indicating that the types of misconduct reported by the Bureau of State Audits (BSA) in its March 2007 investigative report are more widespread, involving other DOGGR personnel.
- Organizational weaknesses, particularly those involving DOGGR management and supervision, create opportunities for future problems that could undermine DOGGR's integrity and regulatory effectiveness.

Recommendations

1. Department and DOGGR executives should continue efforts currently underway, working with an outside consultant to address DOGGR organizational deficiencies through development of strategic initiatives. These initiatives should be incorporated into DOGGR's strategic plan and implemented as soon as possible.
2. The Department should monitor and support efforts by DOGGR executives to implement strategic initiatives developed to address DOGGR organizational weaknesses.
3. Each DOGGR district should be subject to periodic peer reviews in the future, perhaps as often as every two to three years.
4. DOGGR executives should periodically conduct climate surveys of DOGGR personnel.
5. Results of future climate surveys and peer reviews should be considered in the development of DOGGR's future strategic initiatives.

INTRODUCTION

Background

In May 2006, the Department of Conservation (Department) and its Division of Oil, Gas and Geothermal Resources (DOGGR) learned that a DOGGR employee had, in the previous month, expedited approval of an oil company's 24 applications for permits to drill wells in a particular oil field regulated by DOGGR.

Operations in that field were at that time the focus of significant local controversy involving concerns of some citizens living in communities immediately adjacent to the field. In fact, the controversy had become so complex that on April 26, 2006, DOGGR executives had ordered a temporary cessation of all new-well permitting in the field, pending the conclusion of meetings and development of an agreement between local governments, DOGGR executives and the oil company operating the field (hereinafter "the Company"). The 24 expedited permits had been approved over a three-day period, with the last of them being approved on the 26th, just before DOGGR ordered a halt to approval of such permits. The Department's Director, Bridgett Luther, directed the Department's Legal Office to investigate the situation and report back to her.

Preliminary Investigation. Department legal staff first reviewed e-mails of the DOGGR employee (hereinafter "Employee A"), as well as those of other DOGGR staff and management in the chain of command for Employee A or involved in addressing various aspects of the controversy related to the Company's operations. The focus of that review was e-mail communications for the period immediately before and after the permits were approved.

While the review did not reveal involvement of others in the expediting of the 24 permits or in inappropriate communications with representatives of the Company, it did indeed confirm that Employee A had expedited the 24 permit applications. Further, the preliminary investigation showed that the applications were expedited because Employee A believed that he was about to be told to stop issuing such permits because of the local controversy. He had initiated contact with a corporate officer for the Company and had encouraged the Company to get in as many applications as it could before such an order came down from the State Oil and Gas Supervisor. The 24 permit applications were processed and the permits were approved over a three-day period. After confirming the expediting of the permits, the Legal Office expanded the

review of Employee A's e-mails to cover a period extending back more than two years. The review indicated a disturbing pattern of conduct involving Employee A, extending beyond his relationship with the Company. The Legal Office reported the results of its preliminary investigation to Director Luther. She, in turn, rescinded the 24 permits and decided to refer the matter to the Bureau of State Audits (BSA) for further investigation under the State's Whistleblower Protection Act.

BSA Investigation. The BSA investigation culminated in issuance of a report on March 22, 2007, in which BSA made a number of findings regarding Employee A and his manager ("Employee B"). The findings involved violations of a number of state laws and policies governing public employee conduct.

Among other things, BSA found that both employees had invested in oil and gas companies at various points in recent years and failed to report those investments on their annual statements of economic interests ("Form 700s"), in violation of State law. According to the BSA, investments may have influenced the regulatory decisions of Employee A, an associate engineer. As BSA was concluding its investigation, it notified the Department that at various points over the course of a year, Employee A held investments exceeding $25,000 in the Company even as he made regulatory decisions affecting it. Personnel with BSA suggested that the Department might wish to take a closer look at some of the regulatory decisions of that employee related to that company. The Department agreed to do this.

Internal Investigation. The Department and Resources Agency determined that it would be prudent to conduct an internal investigation of DOGGR to ensure that conduct such as that reported by the BSA was not more widespread and to get a better sense of potential problems associated with activities of Employee A. To oversee and advise the Department and Resources Agency regarding this endeavor, Secretary of Resources Mike Chrisman appointed an independent advisory panel. The Resources Agency Advisory Panel ("Advisory Panel") comprises three distinguished individuals with many years in state and local government: Fred Keeley, Bruce McPherson and John Van de Kamp.

The focus of this report is the internal investigation conducted by the Department, with oversight and advice from the Advisory Panel and assistance from DOGGR executives and selected DOGGR personnel.

SCOPE AND METHODOLOGY

The Department, with the assistance of selected DOGGR personnel, accomplished the internal investigation through a variety of means, including review of employee e-mails and examination of all Form 700s filed by DOGGR staff and management for calendar years 2000 through 2006. Further, at the suggestion of the Advisory Panel, the Department and DOGGR executives conducted an anonymous survey of DOGGR staff.

Finally, a team of DOGGR personnel conducted a peer review in three of DOGGR's six oil and gas districts. The aspects of the peer review that were investigative in nature will be discussed in this report. Much of the peer review process focused on a review of regulatory processes and technical operations in the three districts. A detailed report regarding the process and technical aspects of the peer review will be submitted to DOC and DOGGR executives for their consideration at a later date.

Department legal counsel coordinated and advised regarding all of the investigatory and review activities. A brief description of scope and methodology for each of these activities follows.

Form 700 Review

Department legal staff worked with human resources (HR) personnel and DOGGR management to conduct the review. When potential problems were identified, Department legal counsel worked with DOGGR executive to follow up with individual staff, ask any questions or convey particular concerns.

Findings related to the Form 700 review will be discussed in the "Results" section below.

E-mail Review

Even as the review of Form 700s was underway, Department legal staff conducted further review of e-mails for selected DOGGR personnel. Altogether, e-mails for 28 DOGGR personnel were reviewed. This represented more than 20% of DOGGR's entire staff. E-mails were from various periods in 2006. Criteria used for selection of personnel subject to this review were as follows:

- **Any employees who reported economic interests tied to oil and gas companies**, if those companies have been regulated by DOGGR for the years in which the employees held investments. Two employees reported investments in companies regulated by the division on their Form 700s. Another employee reported acceptance of green fees for a charitable golf tournament. E-mails for all three were reviewed for any evidence of questionable treatment or favoritism involving those companies.

- **Managers or staff involved in regulating any aspect of operations involving the Company**, in the field that has been the focus of the local controversy, as well as some staff involved in regulating the Company in other districts. Altogether, including the two employees that were the subjects of the BSA report, this involved eleven personnel, including the State Oil and Gas Supervisor, the deputy chief, two senior engineers and two associate engineers at DOGGR headquarters, and two senior engineers and three associate engineers in districts.

- **Judgmental (non-random) sample.** At the request of the Advisory Panel, the number of personnel subject to e-mail reviews was increased by adding 14 additional DOGGR personnel, representing various levels of district personnel, across all oil and gas and geothermal districts. Selection of these personnel was based exclusively on their district assignment and position classification.

Results of the e-mail reviews will be discussed in the "Results" section below.

Staff Survey

At the suggestion of the Advisory Panel, the Legal Office conducted an anonymous survey of DOGGR management and staff from June 1 through June 15, 2007. Legal staff worked with a small group of DOGGR personnel to develop the survey instrument, using Survey.com, an online service. The survey instrument contained 41 questions and was designed to accomplish several objectives, related both to the anticipated review of DOGGR processes, and the internal investigation. As to the latter, we hoped that staff would feel safe sharing information and experiences that could inform the shape and direction of investigative steps to follow. On the advice of the Advisory Panel, the instrument was designed to provide many opportunities for narrative comment by survey participants.

The questions included in the survey covered a variety of subject matter including employee ethics, headquarters oversight of district operations, supervision and management within the districts, employee job satisfaction, quality and effectiveness of enforcement efforts, employee job performance and awareness of division policy. Seventy-nine DOGGR personnel participated in the survey, comprising more than 60% of DOGGR management and staff.

Legal staff and DOGGR executive reviewed all responses and worked together to compile survey results and identify common themes. A comprehensive compilation of survey results, both quantitative and narrative, was shared with the Resources Agency Advisory Panel, along with a report on identified themes.

Aspects of the staff survey that are relevant to the internal investigation will be discussed in the "Results" section below.

Peer Review

The Department, in consultation with State Oil and Gas Supervisor Hal Bopp, selected a DOGGR district deputy to head the peer review team. The district deputy selected the team members that he believed would have the degree of competence, skill and objectivity necessary to conduct the review. The team consisted of the team leader, three associate engineers and two energy mineral resource engineers (EMREs). Including the deputy, the team represented all six oil-and-gas districts in the State. No team member was involved in the review of his or her own district.

Scope Included Both Investigative and Process Review Activities. The Director determined early on that the deputy would work with the DOC Legal Office in designing and implementing the peer reviews given the sensitive and somewhat investigatory nature of some of the team's work. The team would review actions in three districts, including the two districts in which employees with reported investments are assigned (Districts B and C), and District A. In the case of District A, extra time would be taken in reviewing files and conducting interviews, given the problems reported by BSA.

During the initial stages of planning, the team deputy and Department legal counsel added a third focus to the peer review. In addition to looking at specific decisions of particular staff related to companies in which they had financial interests, the team would conduct a review of key regulatory processes in each of the three districts, to determine where there are inefficiencies and weak controls that could invite the kinds of problems reported by the BSA in its report, or present different vulnerabilities altogether.

This aspect of the peer review is consistent with the Secretary's request that the Advisory Panel determine if problems reported by the BSA were isolated incidents or indicative of a larger, more systemic problem.

The team deputy worked with his team to design the specific steps they would take in conducting the process review, including the questions they would use in interviewing all levels of district staff. The deputy worked with legal counsel on the scope of testing related to the employees who had investments in companies they regulated. As the team began the actual review, the deputy worked with legal counsel to refine some aspects of the review process and establish the framework for reporting the team's observations and findings.

The team deputy determined that he would personally review decisions related to the District B and District C employees who reported investments in companies they regulate. He did this because he did not want the review to unfairly brand the employees, given that there was no evidence that they had violated any laws. The other team members had no knowledge of this aspect of the peer review.

In District A, much of the investigative focus was on actions of Employee A. Team members scrutinized permitting and other decisions carried out by Employee A, hoping to identify any actions creating a continuing threat of harm. At the same time, team members reviewed actions associated with other district employees and documented any significant areas of concern regarding district practices. Because Employee B is a manager, few actions are directly attributable to him. This made it difficult to conduct this aspect of the peer review testing with regard to his actions. However, the peer review team identified a number of management issues either directly, or indirectly, attributable to him.

Methodology. The team identified 16 regulatory and administrative processes, program areas and activities that they would focus on in each district. In addition to documenting and evaluating district practices themselves, the team would test samples of transactions to provide a baseline for evaluation of activities tied to the investigation, such as actions of Employee A in District A. Processes, activities and program areas examined as part of the peer review included the following:

- ✓ Permitting
- ✓ Field Testing
- ✓ Field Surveillance (non-permitted – complainant/concern/program)
- ✓ Field Surveillance (non-permitted, self-generated)

- ✓ Deficiencies
- ✓ Violations
- ✓ Civil Penalties
- ✓ Formal Orders
- ✓ UIC Program
- ✓ Idle Wells
- ✓ Construction Site Review
- ✓ Production Audits
- ✓ Well Records
- ✓ Records Requests
- ✓ Verbal Approvals
- ✓ Contracts

The team selected processes susceptible to abuse favoring a particular company. The breadth of the testing was especially important in District A, given the nature of how staff members are assigned there. Specifically, an associate engineer in District A is assigned to specific fields, instead of one particular function, such as permitting, and may perform multiple regulatory activities related to those fields and companies operating within them. There is a greater opportunity under that scenario for the kind of dynamic between regulator and the operator that was reported in the BSA report, and a wider range of opportunities for abuse.

Interviews. A key component of the peer review methodology was the interview process. The peer review team interviewed a large number of personnel, from support staff up through the district deputies, in each subject district, using a standard questionnaire. The objectives of the interview process were as follows:

- ✓ Document every aspect of how each process or activity is handled, according to staff and management descriptions.
- ✓ Provide the opportunity for interviewees to report any concerns or vulnerabilities related to processes, activities or personnel. While team members did not ask for information regarding individual district personnel, they received such information in each of the three districts – especially in District A.
- ✓ Identify areas that may require special scrutiny in the course of file review, or may indicate the need for a more focused follow-up analysis.

File Review. Once the interview process was complete, team members selected a non-random sample of well files containing records of transactions for particular wells.

They reviewed the records and determined if the transactions reflected in the records (for example, permitting) were consistent with the associated processes as described during the interviews. They noted any technical concerns or process concerns arising from that review. In District B and District C, the team deputy reviewed files associated with regulatory decisions of the two district personnel who reported investments in companies regulated by their respective districts. He looked for any anomalies or inconsistencies with established district practice that might evidence special treatment.

Observation. Team members also observed various activities and conditions in the districts and included those in their report, especially if their observations caused them some concern. For example, in District A, team members noted there is very poor documentation of some district regulatory activities. This not only made it difficult for team members to review the activities, but also left them wondering in some cases if reported activities had actually taken place.

Field inspections were another key observational component of the peer review process when evaluating regulatory activities such as field surveillance and lease awards. For example, the team conducted field visits to observe conditions in several fields and determine if those conditions were consistent with the related company having received lease awards for its operations in those fields. The team found no significant areas of concern in the course of their field inspections, including nothing to indicate that companies receiving lease awards were undeserving of the awards.

Special Considerations for District A. The basic peer review process evolved over time, with refinements and adjustments being made following team debriefings and meetings between the deputy and department legal counsel. It was crucial that those adjustments occur before the team began its review in District A, given the known risks associated with misconduct already reported there. Because of those issues and risks, and questions about associated processes and conditions that may have contributed to the problems, the District A review involved even more scrutiny than the reviews in the other two districts – especially with regard to the actions of Employee A.

The team reviewed 270 permits, randomly selected, in District A. The permits covered numerous operators and fields. As with the other districts, this helped establish a baseline for what is normal district practice – comparative criteria for the more focused review of Employee A's actions that was to follow. Team members reviewed 160 permits issued by Employee A, and conducted hours of interviews with district personnel about regulatory activities associated with Employee A. This was especially

critical given that documentation for many of Employee A's work actions was missing from the district files.

RESULTS

The results of the internal investigation will be discussed in the context of the questions the Resources Agency Advisory Panel is charged with answering. The results section will focus on one of those questions in particular:

> **Were the actions of the employees who were the subjects of the BSA investigation isolated incidents or were they examples of a larger, more systemic problem?**

In short, as discussed in Section I, the internal review revealed no evidence indicating other DOGGR personnel had engaged in misconduct similar to that reported by BSA in its report. Further, as discussed in Section II, we found no new evidence of misconduct on the part of Employee A that was of the nature reported by BSA. We did, however, document significant areas of concern regarding Employee A's performance, some likely warranting additional review or other action, as will be discussed in Section III, which focuses on District A, specifically. That section describes in some detail some of the manifestations of management and supervision problems encountered in that district – problems which could, if left unaddressed, invite additional problems of a similar nature to those reported by BSA.

As will be discussed briefly in this report, the investigation and other aspects of the peer review illuminated cross-cutting issues related to organizational and management weaknesses that, if not addressed, would provide an opportunity for future abuse or other problems that would undermine the integrity and effectiveness of DOGGR's regulatory efforts. As this report was being drafted, the Department and DOGGR executives have been working with an outside consultant to develop strategic initiatives to address such issues.

I. NO EVIDENCE OF MORE WIDESPREAD MISCONDUCT WAS IDENTIFIED

All aspects of the internal investigation, including some activities carried out in conjunction with the peer review, were at least partially intended to determine whether additional DOGGR personnel had engaged in misconduct similar to that reported by

BSA. Specifically, these investigative activities were focused on accomplishing the following:

- Determine whether employees with reported investments in companies regulated by their districts engaged in misconduct or otherwise acted in a manner that may have been influenced by their investments.
- Determine, to the extent possible, whether other DOGGR employees held unreported investments in companies regulated by their districts or engaged in other kinds of misconduct similar to that reported by BSA.

No Evidence of Misconduct on the Part of Employees with Reported Investments. In the course of the Form 700 review, we identified two DOGGR employees with reported investments in companies they regulate. These did not necessarily constitute violations of the State's Political Reform Act in that (1) the investments were reported and (2) the investments were not at a level that would necessarily lead to disqualification of the employees from decisions involving the companies.

Nonetheless, the Department decided to review e-mails of those employees, as well as a sample of actions undertaken by the two employees, to determine if there was any evidence of the employees' investments having influenced their decisions. The district deputy in charge of the peer review personally conducted the portion of the testing focused on actions of the two employees and found no such evidence. Department legal counsel reviewed e-mails of the two with similar results. In fact, e-mails of the two did not reflect any inappropriate communications with the companies in which they invested. This contrasted sharply with Employee A, who had a significant number of such e-mails.

Although the investigation did not reveal any evidence of wrongdoing on the part of either employee, Department legal counsel and DOGGR executive noted the potential that these situations could create an appearance of impropriety and undermine the integrity of DOGGR's regulatory efforts. One of the two employees voluntarily divested himself of stock in the company his district regulates. The other did not; however, his district deputy agreed to take steps to ensure that the employee will no longer make any regulatory decisions related to the company in which he invested, for as long as he continues to hold that stock.

The Form 700 review also identified one DOGGR employee who reported receiving green fees from a drill company that does business in her district. The green fees

covered the employee's participation in a charitable golf tournament and were well within the legal limit established for public officials. A review of the employee's e-mails revealed no evidence of inappropriate conduct related to the company in question or inappropriate conduct of any kind. Regardless, the employee has since stated that she will no longer accept such gifts, to avoid even an appearance of impropriety.

No Evidence of Additional Employees with Unreported Investments or Involved in Other Misconduct Such as That Reported by BSA. As is the case when trying to prove any negative, it would be impossible to say, unequivocally, that no additional DOGGR employees have participated in misconduct such as that reported by BSA. However, it can be said that the review of selected staff and management e-mails, as well as work conducted by the peer review team, identified no evidence of such misconduct. The e-mail review, together with State Oil and Gas Supervisor Hal Bopp's discussions with DOGGR staff throughout the State immediately following publication of the BSA report, identified no employees, other than the two subjects of the BSA report, who failed to report investments or gifts on their annual forms 700. Further, the e-mail review and peer review process revealed no additional employees who engaged in other kinds of misconduct reported by BSA, such as showing favoritism to particular companies in the course of carrying out their duties or using significant amounts of state resources for non-state-related purposes. In fact, e-mails generally demonstrated the professional nature of such interactions on the part of those whose e-mails we examined.

II. THE INVESTIGATION DID NOT IDENTIFY ADDITIONAL MISCONDUCT ON THE PART OF EMPLOYEE A THAT WAS SIMILAR IN NATURE TO MISCONDUCT REPORTED BY BSA.

As part of the peer review process, the team tested permits that Employee A issued between January 2003 and June 2007. Altogether during that period, Employee A issued more than 960 permits – nearly 24% of all permits issued by eight district engineers during that time. The permits tested were issued to 7 operators and included 114 permits issued to the Company, for operations in multiple fields. File reviews did not indicate Employee A showed particular favoritism to any single company, beyond what was already known. Further, extensive interviews with district staff did not reveal any such pattern.

Pattern of Poor Documentation and Other Performance Issues Evident During Peer Review. Interviews and file reviews conducted by the peer review team did identify a pattern of poor documentation, lax oversight and what appeared to be a failure on Employee A's part to effectively carry out some of his regulatory responsibilities, or perhaps a failure to carry them out at all. In some instances, the lack of documentation in district files made it impossible for team members to determine what work Employee A had or hadn't done, or to evaluate work that he apparently did perform. For example, Employee A was responsible for conducting annual project reviews for Underground Injection Control projects but there is no documentation showing that these reviews were ever done. The district database indicated a large portion of the reviews were done; however, contrary to DOGGR requirements, nothing was found in the project files to verify this.

Comments representing the opinions of Employee A's former coworkers about his performance amplified team members concerns, painting a picture of an employee who was shown favoritism by his manager in his assignments; allowed to waste significant amounts of time and ignore established work hours; and who was far too lax in following the established protocol for some of his responsibilities.

E-mail Review Corroborated Peer Review Findings. It is notable that during the Department's review of Employee A's e-mails over a three-year period, several e-mails were identified that seem to corroborate coworker statements heard during the peer review, as well as findings associated with the peer review file review. The Panel has been apprised of the information supporting this conclusion. .

For example, a company representative notified employee A that work had been performed on a well without first securing the necessary permit. The representative apologized profusely. In response, Employee A told the representative not to worry, noting that while other employees of DOGGR would get upset by this, he didn't think it was a "big thing."

In fact, such a violation of state law is a big thing – enough of one that it can result in the assessment of a civil penalty. When a permit is not secured before drilling occurs and a well is completed, DOGGR does not have an opportunity to ensure that the work will be performed consistent with state requirements and sound engineering practice. Unfortunately, once most well work is completed, there is no way to detect an operator's failure to comply with state requirements in performing the work – at least not until resulting problems are detected.

The significance of the problems with Employee A's conduct, coupled with the fact that so many district personnel seemed aware of those problems, points to larger issues in District A, which will be discussed in Section III, below.

III. The Investigation and Process Review Identified Significant Organizational and Management Problems in District A. Some of These Problems Contributed to Issues Reported by BSA and Could Lead to Serious Problems in the Future, if Not Addressed.

Management, supervision and morale problems. If there is a central theme that emerged across all investigative activities in reference to District A, it is poor supervision and management. Weak management translates into weak internal controls and accountability, and nowhere was this more evident than in circumstances surrounding Employee A's expediting of the 24 permits. Employee A clearly prepared the permits, but his supervisor signed them. When asked whether he had actually reviewed the 24 permits before signing, the supervisor said "yes." When asked what kinds of things he looks for in conducting such a review, he said "typos." Essentially, Employee A was able to process 24 permits through the system -- an extraordinary number over a three-day period – unencumbered by internal controls or oversight in any meaningful sense.

It was very clear in BSA's report and through the Department's own e-mail reviews and interviews with district personnel that Employee A expended significant amounts of work time and state resources on non-work-related activities, including time spent organizing charitable golf tournaments for his wife's employer. He apparently did so with the knowledge of his superiors and, at least implicitly, with their permission. As noted earlier in this report, District A personnel expressed the opinion that Employee A's friendship with his manager, Employee B, allowed him to have certain privileges not afforded other staff – most notably, a lack of oversight.

A number of people encountered during the course of the investigation, including observers visiting the district office, some participants in the staff survey, and district personnel interviewed during the peer review, reported very serious morale problems in District A -- problems that largely existed before the publication of BSA's report. Phrases pulled from initial peer review filings refer to "an attitude of not caring," "turf wars," allegations of an office "caste system" and a "lack of respect" toward support staff.

Management and supervision problems in District A are so significant as to warrant special mention here, even as Department and DOGGR executives work to resolve them. Examples of conditions in District A that point to inadequate accountability and, generally, weak supervision and management include the following:

- **Poor documentation**. This was a problem across all functions in the district, and not just confined to files related to activities of Employee A.
- **No formal tracking** to ensure permits are processed within the 10 days required by law. In fact, 16 % of the permits issued over the past four years were not processed within the ten-day period. When asked about it, staff responded that it's no big deal because the industry doesn't complain.
- **No cross-training or backup** person for EDP data entry and no proper review of data entry. Also, weak or no backup for the associate handling environmental reviews if he's out of the office.
- Some **technical reports have not been finalized** for periods of up to three years.
- **Inadequate review** of wells for construction site reviews.
- **Lack of coordination** between district support units.
- **No established guidelines** for issuance of verbal approvals for well work. Peer review team members were told some associate engineers issue verbals for "all kinds of work" and don't document this to the well files.
- **Disregard for or misunderstanding of legal requirements**.
- **Well files are disorganized and incomplete**.

District A's weak internal controls and management oversight, as evidenced in the above list of conditions found by the peer review team, provided an ideal environment for the kind of misconduct noted in the BSA report. For this reason, Department and DOGGR executives are presently working with an outside consultant to develop strategic initiatives to strengthen DOGGR's organizational structure and processes.

IV. Problems in Other Districts Were Identified, Though Not as Severe or Numerous as Those Identified in District A.

As discussed in a previous report to the Advisory Panel, the peer review for DOGGR districts headquartered in District B and District C also identified problems. Most notable in District B was the concentration of too much information, responsibility and control in a single individual. This resulted in several problems, including inability of district personnel, including the district deputy, to access computer systems or carry out some regulatory functions in that individual's absence. Although the peer review team identified no evidence of abuse associated with this employee (nor has there ever been even a suspicion of abuse on his part), such weak internal controls create an ideal environment for abuse to occur, undetected. Conditions also allow for mistakes to go undetected, some of which could have dire consequences.

In District C, the district's lack of automated processes and its inefficient and redundant handling of the resulting cumbersome volume of paper documents, creates the risk that critical matters could be overlooked or simply not handled timely. Of particular concern to the peer review team in District C was the significant backlog of work associated with two critical district functions, which has a cascading effect on other district operations.

IN CONCLUSION

The internal Investigation found no evidence indicating additional DOGGR employees are engaged in conduct similar to that reported by BSA. Specifically, the investigation did not find any wrongdoing on the part of DOGGR employees who reported investments in companies they regulate. Additionally, the investigation found no evidence of any additional DOGGR employees who failed to report investments in companies they regulate. The investigation did find multiple examples of Employee A failing to perform some of his responsibilities or performing them inadequately.

The investigation, as well as other aspects of the peer review, also found multiple examples of inadequate controls and other management and supervision weaknesses in District A. Further, the peer review process revealed organizational weaknesses across all three districts reviewed.

Underlying Problems Must Be Addressed. The peer review of District A revealed more concerns of a substantial nature than were identified for the other two districts combined. However, significant problems were identified in all three districts, pointing to an overall problem involving weak management and supervision.

The fact that some of the problems identified by BSA and by department personnel went on for extended periods, undetected or perhaps even ignored in some instances, point to overall organizational weaknesses and, specifically, point to a lack of adequate district accountability to, and oversight by, DOGGR headquarters. Such weaknesses should be addressed with the assistance of the Department's outside consultant, as well as the oversight and support of the Department executive.

Ongoing Measures Should Be Instituted to Monitor DOGGR's Organizational Effectiveness. Some of the problems identified by the BSA through its whistleblower investigation or subsequently identified by Department personnel could have been curtailed or altogether avoided if steps had been taken earlier to routinely review DOGGR regulatory processes and district operations.

Given the success of both the anonymous staff survey and the peer review in identifying significant organizational issues, it is recommended that both activities be conducted routinely in the future. Specifically, it is recommended that each district's operations be subject to a peer review every two to three years. Also, it is recommended that anonymous climate surveys be conducted at least as often. Finally, it is recommended that DOGGR executives consider the results of the peer reviews and staff surveys in future strategic planning.